IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

CRL.A.No. 2128 of 2006()

AGAINST THE ORDER IN CRLP.548/2006 Dated 20/10/2006
ST.410/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAPPANA

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APPELLANT:

HIGRADE AUTO FINANCE,
KATTAPPANA, REPRESENTED BY ITS
MANAGING PARTNER K.T. THOMAS,
KURUVATHAZHA HOUSE, KATTAPPANA.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENTS:

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1. KURUVILA K.J., S/O. JOSEPH,
KOTTAYIL HOUSE, ANAVILASAM P.O.,
KUMILY, IDUKKI DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No.2128 of 2006

Dated this the 13th February, 2007.

J U D G M E N T

The complainant in S.T.No.410/2004, on the file of the Judicial First Class Magistrate Court, Kattappana, is the appellant. The complaint was filed under Section 138 of the Negotiable Instruments Act, in short 'the Act', against the first respondent, accused, as the cheque, dated 20.1.2004, for an amount of Rs.1,62,000/= issued by the first respondent, accused, was dishonoured. As the amount was not settled despite Advocate's notice, the above complaint has been preferred. It was dismissed on the ground that neither the appellant nor the Pleader present, and the accused was acquitted. Hence this appeal, on obtaining leave of this Court.

2. The learned counsel appearing for the appellant, complainant, submits that the appellant was absent on the appointed date, but an application to that effect was filed. It was not considered by the learned Magistrate. No reason also is stated in the impugned order, for not considering the application for condonation of the

absence of the appellant, as the impugned order is in a specified printed form. Thus, there is no judicial application of the mind, submits the counsel.

3. Notice was issued to the first respondent, accused. Though the service is complete, first respondent, accused, is not present before me. Hence, I heard the learned counsel appearing for the appellant, complainant.

4. In the circumstances of this case, I am of the view that an opportunity be given to both sides to adduce evidence. Therefore, I set aside the impugned order, dated 28.4.2006, and restore S.T.No.410/2004, to the file of the Judicial First Class Magistrate Court, Kattappana.

5. The appellant, complainant, shall appear before the court below on 12.3.2007.

6. As the first respondent, accused, has not appeared before this Court, despite notice, coercive steps be taken against the first respondent, accused, and the matter shall be disposed of, within two months from the date of appearance/production of the first respondent, accused, before that court.

Criminal Appeal is allowed accordingly.

J.M. JAMES,
JUDGE

nj.